Court No. 2

In the High Court of Uttaranchal at Nainital.

A.O. No. 35 of 2003.

Devkinandan S/o Chet Ram,
R/o Hedwala Jaghra, Chakrata Road,
Dehradun, District-Dehradun.

.....Claimant/Appellant

Versus

1. Motor Accident Claims Tribunal/
   Special Judge, C.B.I., Dehradun,
2. Shamshad Ali,
3. Iqbal,
4. United India Insurance Company,
   through its Branch Manager, Dehradun

.....Respondents

Dated: 23rd Aug.,2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the claimant/appellant against the judgment and order dated 05.12.2002 passed by Motor Accident Claims Tribunal /Special Judge C.B.I., Dehradun in Motor Accident Claim Case No. 58 of 2000, by which the Tribunal has dismissed the claim petition of the filed by the claimant under Sec. 166 of the Motor Vehicle Act, 1988.

2- Brief facts giving rise to this appeal are that on 29.11.1999 claimant Devkinandan boarded in the bus No. UP 07-5686 at Prince Hotel, Dehradun for going to his village Jhajra. When the said bus reached infront of R.K.Globle Academy, he asked to the Conductor Iqbal who is Opp.party No.2 to stop the bus for stepping down. When he reached near the door of the bus for stepping down, the Conductor pushed him due to which he fell down and

received injuries. It was alleged that the claimant was aged 35 years at the time of accident and he was earning Rs. 150/- per day by doing mason work. Due to his injuries he will not be able to do his work. The said bus was insured with United India Insurance Company.

3- The Tribunal framed issues and after scrutinizing the evidence adduced by the parties rejected the claim petition on the ground that the accident is not proved. Feeling aggrieved by the said judgment and order, the claimant has come up in this appeal.

4- Heard Sri Ram Ji Srivastava , learned counsel for the appellant and Sri D.S.Patni, learned counsel for the Insurance Company.

5- Learned counsel for the appellant pressed the appeal only on the ground that the learned Tribunal fell into error in holding that the accident was not proved by the offending bus and rejected the claim petition of the injured-claimant. We have gone through the impugned judgment. There was evidence on record that the conductor, who pushed Devkinandan who is injured-claimant, was subsequently tried in the criminal offence and he was charge –sheeted and bailed out. This evidence could not have been ignored and this evidence itself proves the occurrence of accident. Therefore, the Tribunal fell into error in holding that the occurrence of accident is not proved. The finding given by the learned Tribunal is set aside. The appellant shall be entitled for compensation. As per evidence on record, the claimant has suffered injuries at the left hand and left leg. The offending bus No. UP 07-5686 was a private bus and was insured with United India Insurance Company. The conductor was employee of the said bus. According to the claimant, he has incurred Rs. 10,000/- on his medical treatment which is going on.

6- In our opinion, in the interest of justice the claimant is awarded a lump sum amount of Rs. 40,000/- (Rupees forty thousand) as compensation which shall be paid to him by the respondent No.4-United India Insurance Company Ltd. alongwith interest at the rate of 6% (six per cent) per annum from the date of filing of the claim petition till the date of payment.

7- The appeal is allowed accordingly. The impugned order dated 05.12.2002 is set aside.

(B.S. Verma,J.) **(P.C. Verma,J.)**

P.Singh